

JUL 24 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Occidental Chemical Corporation
and Chemical Land Holdings, Inc.
c/o Maxus Energy Corporation
717 North Harwood Street
Dallas, TX 75201

Attention: William C. Hutton
Director, Environmental Affairs

Re: Consent Decree for the Diamond Alkali Site, Newark, NJ
Letter of Credit/Documentation of Insurance Coverage/Notice of
Consent Decree/Records Retention Agreement

Dear Mr. Hutton:

This letter is in response to four submittals made to the U.S. Environmental Protection Agency (EPA) on behalf of Occidental Chemical Corporation and/or Chemical Land Holdings, Inc. The four submittals are as follows:

1. The amendment to Letter of Credit No. 103399 that was transmitted to EPA with the November 29, 1990 letter from Irene Keeling of Maxus Energy Corporation
2. The Documentation of Insurance Coverage that was transmitted to EPA with the December 14, 1990 letter from Robert S. Junkrowski of Woodward-Clyde Consultants
3. The materials regarding the Notice of Consent Decree that were transmitted to EPA with the December 28, 1990 and January 7, 1991 letters from Margie D. Patrick of Maxus Energy Corporation
4. The Records Retention Agreement that was transmitted to EPA with the January 23, 1991 letter from Margie D. Patrick of Maxus Energy Corporation

The above-listed submittals were made, respectively, pursuant to Sections XVIII.A., XXIX.B., III.D.3. and XIX.C. of the Consent Decree for the Diamond Alkali Site. While the Consent Decree does not require that EPA approve, disapprove or comment on these submittals, it is appropriate that EPA respond to Occidental

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Chemical Corporation and Chemical Land Holdings, Inc. regarding these submittals. Enclosed please find the comments prepared by EPA, in consultation with the State of New Jersey, regarding the four submittals.

I request that Occidental Chemical Corporation and Chemical Land Holdings, Inc. respond in writing to the enclosed comments by not later than August 5, 1991. The response should provide all of the additional information requested and should explain how Occidental Chemical Corporation and/or Chemical Land Holdings, Inc. propose to address each of the EPA concerns listed. Failure to provide an satisfactory response may lead EPA to determine that the Settling Defendants have not complied with one or more of the cited Consent Decree provisions.

Mr. Jonathan Josephs of my staff may be contacted at (212) 264-8098 if there is a need to discuss this matter.

Sincerely yours,

Raymond Basso, Chief
New Jersey Compliance Branch
Emergency and Remedial Response Division

cc: P. Lange, NJDEP
H. Bedbury, Maxus
R. Junkrowski, WCC

bcc: M. Hayden, ORC
C. Shpall, DOJ
T. Graff, USACE

Consent Decree for the Diamond Alkali Site, Newark, NJ

EPA Comments on Submittals Regarding the Letter of Credit, Documentation of Insurance Coverage, Notice of Consent Decree and Records Retention Agreement

I. Comments Regarding the Letter of Credit

The November 29, 1990 submittal did not provide EPA with enough information to document compliance with Section XVIII of the Consent Decree. EPA has the following specific comments:

- a. The November 29, 1990 submittal transmitted an amendment to Letter of Credit No. 103399. In order to fully evaluate the submittal, EPA requests a copy of the trust agreement for the standby trust fund referred to in the letter of credit.
- b. Letter of Credit No. 103399 provides financial assurance in the amount of twelve million dollars (\$12,000,000). However, Section XVIII.C. of the Consent Decree provides that "[t]he Parties agree that the total of sixteen million dollars (\$16,000,000) in letters of credit presently in effect pursuant to ACO I and ACO II shall be adequate financial assurance hereunder...." A second letter of credit in the amount of four million dollars (\$4,000,000) must also be amended to satisfy Section XVIII.C. of the Consent Decree and the relevant documentation needs to be submitted to EPA and the State.
- c. The amended letter of credit provides that a beneficiary "may draw on the letter of credit by certifying that the amount of the draft is payable pursuant to the terms and provisions of the March 13, 1984 Administrative Consent Order executed by the New Jersey Department of Environmental Protection and Chemical Land Holdings, Inc. (on behalf of Occidental Chemical Corporation) in order to remedy the contamination identified at 80 Lister Avenue (Block 2438, Lots 58 and 59) Newark New Jersey." EPA is concerned about this certification language because it is not clear that all of the work required by the CD is also required by ACO I. In addition, while ACO I gives NJDEP certain rights to draw on the letter of credit, the ACO does not appear to give EPA any such rights. EPA is concerned that 1) although EPA is now named as a beneficiary, the certification language may not allow EPA to draw on the letter, and 2) it is not clear that EPA or the State can draw on the letter for work that is required by the Consent Decree but is outside of the scope of ACO I.

II. Comments Regarding Documentation of Insurance Coverage

It appears that documentation of insurance coverage that was transmitted to EPA with the December 14, 1990 letter from Robert S. Junkrowski of Woodward-Clyde Consultants shows compliance with the requirements of Section XXIX.B. of the Consent Decree. However, copies of the corresponding insurance policies are requested for EPA's records.

III. Comments Regarding the Notice of Consent Decree

The materials that were transmitted to EPA with the December 28, 1990 and January 7, 1991 letters from Margie D. Patrick of Maxus Energy Corporation provide documentation of compliance with the requirements of Section III.D.3. of the Consent Decree.

IV. Comment Regarding the Records Retention Agreement

Section XIX.D. of the Consent Decree states: "Prior to ceasing to preserve and maintain any records and documents retained pursuant to Sections XIX.A., XIX.B. and XIX.C., supra, Settling Defendants shall provide at least ninety (90) calendar days written notice to EPA and the State. EPA will thereafter notify Settling Defendants in writing with respect to the appropriate disposition of said records and documents, which may include transfer of said material to EPA or the State." The Records Retention Agreement that was transmitted to EPA with the January 23, 1991 letter from Margie D. Patrick of Maxus Energy Corporation does not appear to contain provisions which would ensure Settling Defendants' ability to comply with Section XIX.D. with respect to records retained by Maxus Energy Corporation. It appears that Maxus, following the time period specified in Section XIX.A., could cease to preserve and maintain records without any notification to Settling Defendants or to EPA. How will Settling Defendants address this concern?

<p>SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.</p> <p>1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address: (Extra charge) 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3.. Article Addressed to:</p> <p>Occidental Chemical Corporation and Chemical Land Holdings, Inc. c/o Maxus Energy Corporation 717 North Harwood Street Dallas, TX 75201 Attention : William C. Hutton Director, Environmental Affairs</p>	<p>4. Article Number</p> <p>P 545 551 856</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature of Addressee</p> <p>X <i>William C. Hutton</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p>APR 29 1991</p>	
<p>PS Form 3811, Apr. 1989 *U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT</p>	

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